**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 9069 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE D.H.WAGHELA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**HITESHBHAI BHAGAWANJIBHAI KOLI - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & 2 - Respondent(s)**

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**Appearance :**
MR HARSHAD K PATEL for Petitioner(s) : 1,
MS.NISHA PARIKH AGP for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2 - 3.

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**CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA**

**Date : 11/09/2007**

**ORAL JUDGMENT**

**1.** By the present petition under Article 226 of the Constitution, petitioner has sought the relief of order dated 30.01.2007 of his detention being set aside. That impugned order dated 30.01.2007 is issued by Police Commissioner, Rajkot in exercise of his powers conferred under

the provisions of section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short) on the basis that the petitioner was found to be repeatedly indulging in anti-social activity of bootlegging and an offence being III-C.R.No.20 of 2007 under the Prohibition Act was registered on 16.01.2007 against the petitioner in 'B' Division Police Station, Rajkot in which 72 bottles of liquor is stated to have been seized as muddamal even as the petitioner was released on bail on 22.01.2007. It is further stated that the petitioner was likely to persist in his bootlegging activity which, in turn, was likely to cause danger to public health and public order. According to the grounds of detention supplied with the impugned order, even as the aforesaid offence was being investigated, other actions under the Prohibition Act were not possible and alcohol being injurious to health, there was likelihood of danger to public health on account of consumption of illicit liquor in which the petitioner was dealing. It is further stated that possibility of the petitioner continuing in anti-social activities could not be denied and hence it was found to be necessary to detain the petitioner after considering the documents and statements which were relied upon and supplied to the petitioner.

**2.** Even as the present petition was admitted on 05.04.2007 and an affidavit-in-reply of the detaining authority was ready and executed on 18.05.2007, it was submitted to this court and copy thereof supplied to the petitioner only on 11.09.2007 when the matter was taken up for final hearing. It is stated in that affidavit, *inter alia*, that *prima facie* involvement of the petitioner was established in the offence registered against him. It is further stated; *"....I say that in the present case, amongst the relevant materials, I have carefully examined the documents relating to the one case registered against the detenu and from those materials, it is clear that the detenu falls within the definition of "boot-legger" as defined u/s.2(b) of the PASA Act. Therefore, on carefully scrutinising, studying, examining and considering the materials placed before me including the papers pertaining to the above cases and after applying my mind to the facts of the case, I came to the conclusion, after subjectively satisfying myself, that the detenu is dealing in illegal liquor business and he is disturbing the public order, public peace and public health and it is likely that continuance of his anti-social and boot-legging activities may cause grave or wide-spread danger to life, property and public health. Therefore, after subjectively satisfying that the anti-social and boot-legging activities of the detenu cannot be curbed or prevented*

*immediately by resorting to less drastic remedy of taking action under the ordinary law, as a preventive measure, I have passed the order of detention against the detenu under the PASA Act with a view to immediately prevent him from continuing such illegal, anti-social and boot-legging activities which are prejudicial to the maintenance of public order and the said order is passed with full application of mind and in compliance and in consonance with the provisions of the PASA Act as well as the Constitution of India and the said order is legal, valid and proper. I say that all relevant materials and vital documents which have a bearing on the aspect of the matter and which were available have been placed before me and copies of all those documents which have been considered and relied upon by me for passing the order of detention against the detenu, have been supplied to the detenu along with the grounds of detention."*

**3.** In the above facts, it was sought to be argued on behalf of the respondents that danger to public health caused by the activity of bootlegging by the petitioner substantiated the assumption of likelihood of public order being adversely affected and, for that reason, the subjective satisfaction about the necessity of preventing the petitioner from acting in any manner prejudicial to the maintenance of public

order and the impugned order directing his detention were legal and justified.

**4.** However, as held by this Court in ***Amarbhai Kanjibhai Nayak V/s. Commissioner of Police Ahmedabad City & Ors. [1999(3)G.L.R.2703]*** and in ***Sohanlal Surajaram Visnoi V/s. State of Gujarat and others [2004(2)G.L.R. 1051]***, solitary incident of violation of prohibition law, normally, without anything more, would not be a problem to the maintenance of public order and, for such solitary incident, no person can be detained under the Act. It was also seen from analysis of the provisions of Sub-Section (4) of Section 3 and the Explanation appended thereto that the presumption of likelihood of public order being adversely affected could arise, if danger were caused to life or public health, but such danger has to be grave or widespread for the mandatory presumption of likelihood of public order being adversely affected. In the facts of the present case, nothing from the material on record could substantiate or justify the presumption of grave or widespread danger to life or public health and hence, the presumption of likelihood of public order being adversely affected could not have been legally availed by the detaining authority for the purpose of arriving at a subjective satisfaction.

**5.** Therefore, in the facts and circumstances, impugned order dated 30.01.2007 of preventive detention is found and held to be unsustainable in law, and hence set aside with the direction that the petitioner shall be set at liberty forthwith unless required in connection with any other case to be detained in custody. Rule is made absolute with no order as to costs. Direct service is permitted.

(D.H.WAGHELA, J.)

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